

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JAMES P. McCARVILLE,
Petitioner,

vs.

DONNA J. McCARVILLE,
Respondent.

DOCKET 936 PAGE 326

**ORDER ON MOTION
UNDER ADVISEMENT**

DATE OF HEARING: April 21, 2003.

DATE OF RENDITION: May 28, 2003.

DATE OF ENTRY: See court clerk's file-stamp date per § 25-1301(3).

APPEARANCES:

For petitioner: Forrest F. Peetz with petitioner.
For respondent: James D. Gotschall without respondent.

SUBJECT OF ORDER: Respondent's motion for Rule 35 examination.

PROCEEDINGS: See journal entry rendered following hearing.

FINDINGS: The court finds and concludes that:

1. The motion seeks an order to compel petitioner to submit to a physical examination to conduct hair specimen analysis to determine whether petitioner has utilized marijuana or other controlled substances. The court took the matter under advisement pending completion of the amended pleadings.

2. The petitioner's responsive pleading to the amended petition for modification now admits that "petitioner has smoke [sic] marijuana, but denies smoking marijuana while the children were present."

3. The evidence does not show that hair specimen analysis would be probative to show the presence or absence of the children during any smoking of marijuana. Because the responsive pleading judicially admits the smoking of marijuana, that fact is not in issue. The requested examination would not be relevant to a material issue.

ORDER: IT IS THEREFORE ORDERED that:

1. The motion for Rule 35 examination filed on March 28, 2003, and taken under advisement on April 21, 2003, is denied.

2. Because the responsive pleading demonstrates that there was good cause for the motion at the time of filing, all claims for expenses of the motion shall be denied.

3. This order is interlocutory and subject to modification at any time prior to final judgment without further notice or hearing.

Signed in chambers at **Ainsworth**, Nebraska, on **May 28, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.

If checked, the court clerk shall:

☒ Mail a copy of this order to all counsel of record and any pro se parties.

Done on _____, 20____ by _____.

☒ Note the decision on the trial docket as: [date of filing] **Signed "Order on Motion Under Advisement" entered.**

Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge